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354 a copy of the transfer and assumption agreement. Notice must be given by the lender to FmHA or its successor agency under Public Law 103-354 before any borrower or guarantor is released from liability.

(10) The holder(s), if any, need not be consulted on a transfer and assumption case unless there is a change in loan terms.

(11) If a loss should occur upon consummation of a complete transfer of assets and assumption for less than the full amount of the debt and the transferor-debtor (including personal guarantor) is released from personal liability, as provided in paragraph (e) of this section, the lender, if it holds the guaranteed portion, may file an estimated "Report of Loss" on Form FmHA or its successor agency under Public Law 103-354 449-30 to recover its pro rata share of the actual loss at that time. In completing Form FmHA or its successor agency under Public Law 103-354 449-30, the amount of the debt assumed will be entered on line 24 as Net Collateral (Recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption, if not assumed by the transferee, will be entered on Form FmHA or its successor agency under Public Law 103-354 449-30, lines 13 and 14.

(f) *Submission to National Office.* (1) Under any of the following conditions, a proposed transfer or assumption will be forwarded to the National Office for prior review and approval before making any commitments:

(i) Where a loss to the Government will result; or

(ii) The prospective transferee is a member of the present borrower's organization; or

(iii) Proposals for transfer or assumption are made on more liberal terms than set forth in paragraphs (b) and (c) of this section; or

(iv) Proposals for cash downpayment to the present borrower in an amount which exceeds that actual sales expenses; or

(v) The transfer fee is to be waived for a prospective transferee.

(2) All submissions to the National Office will contain:

(i) Transfer case file.

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(ii) OGC comments on the proposed transfer or assumption.

(iii) Appropriate forms to complete the transfer prepared by the transferee.

(iv) Completed environmental review.

(v) Any other necessary supporting information.

[55 FR 11139, Mar. 27, 1990. Redesignated and amended at 56 FR 29173, June 26, 1991]

§ 1980.878 Mergers.

(a) *General.* State Directors are authorized to approve mergers or consolidations (which are herein referred to as mergers) when the resulting organization will be eligible for an FmHA or its successor agency under Public Law 103-354 guaranteed loan and assumes all the liabilities and acquires all the assets of the merged borrower. Mergers may be approved when:

(1) The merger is in the best interest of the Government and the merging borrower.

(2) The resulting borrower can meet all required conditions as set forth in specific loan note agreements.

(3) All property can be legally transferred to the resulting borrower.

(4) The membership of each organization involved is made aware of the proposed merger.

(b) *Distinguishing mergers from transfers and assumptions.* Mergers occur when one corporation combines with another corporation in such a way that the first corporation ceases to exist as a separate entity while the other continues. In a consolidation, two or more corporations combine to form a new, consolidated corporation, with the original corporations ceasing to exist. Such transactions must be distinguished from transfers and assumptions in which a transferor will not necessarily go out of existence, and the transferee will not always take all the transferor's assets, nor assume all the transferor's liabilities.

[55 FR 11139, Mar. 27, 1990. Redesignated and amended at 56 FR 29173, June 26, 1991]

§ 1980.879 Disposition of acquired property.

(a) When the lender acquires title to the collateral through a voluntary basis or foreclosure means, and the FmHA or its successor agency under Public Law 103-354 final loss claim is

not paid until final disposition, the lender should proceed as quickly as possible to develop a plan to see that the collateral is fully protected and a program to dispose of the collateral is commenced.

(b) Any collateral accepted by the lender on a voluntary basis or through foreclosure means *must* be titled in only the lender's name. FmHA or its successor agency under Public Law 103-354 should never be named as owner or co-owner of the collateral. FmHA's position is that of a guarantor.

(c) The first step the lender should take after acquiring the collateral is to see that the collateral is protected from deterioration (weather, vandalism). Hazard insurance in an amount necessary to cover the fair market value of the collateral should be maintained by the lender.

(d) The lender will prepare and submit to the District Director a plan on the best method of sale keeping in mind any prospective purchasers. The District Director will review and recommend action on the plan and forward the plan to the State Director for concurrence. Concurrence or non-concurrence of the plan shall be made in writing to the lender. If an existing liquidation plan addressed the disposition of acquired property, no further review is required unless modification of the plan is needed.

(e) Methods of liquidation.

(1) Direct sale by lender.

(2) Commercial broker.

(i) Broker should be experienced in the type of property involved.

(ii) The written agreement with the broker should include an agreement which allows that if the lender finds a purchaser, no commission would be paid to the broker.

(iii) A maximum of 120 days should be allowed on the contract. The contract should be renewable if all parties agree.

(3) Public auction.

(i) An experienced professional auctioneer should be engaged.

(ii) Adequate advertising should be obtained.

(iii) The lender with FmHA or its successor agency under Public Law 103-354 concurrence shall determine a minimum sale price for the collateral.

(f) Abandonment of the collateral.

(1) The primary purpose of collateral is to afford a net return on the loan balance. However, there will be times when FmHA or its successor agency under Public Law 103-354 will be faced with situations when converting the collateral to cash would result in a loss.

(2) Situations when this type of action could exist are:

(i) Senior lien claims held by other parties against the guaranteed loan collateral and the senior lien claims are more than the collateral value.

(ii) Collateral on the loan has deteriorated to the point where the net sale value (after expenses) of the collateral would not produce any funds that could be applied to the outstanding debt.

(iii) Specialized collateral which has little or no value or demand, taking into consideration the expenses of the sale.

(3) Anytime there is a case when the conversion of collateral to cash can reasonably be expected to result in a negative net recovery amount, abandonment of the collateral should be strongly considered. When a decision to abandon the property is made, the District Director will document the decision in the file and will advise the State Director of the decision.

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§ 1980.880 State Director's additional authorizations and guidance.

All proposed servicing actions which the State Director or lender is not authorized by this subpart to approve will be referred to the National Office.

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§ 1980.881 Appeals.

Appeals are handled in accordance with § 1980.80 of subpart A of this part and subpart B of part 1900 of this chapter.

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